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1981-82, No. 28

An Act to establish and regulate Off-Shore Insurance
in the Cook Islands and matters related thereto

(13 May 1982

BE IT ENACTED by the Parliament of the Cook Islands in Session
assembled, and by authority of the same as follows:

Price

PART I

PRELIMINARY

1. Short-title - This Act may be cited as the Off-Shore Insurance Act 1981-82.

2. Interpretation - In this Act, except in so far as the context or subject-matter otherwise indicates or requires -

"Holder" means, in relation to a licence, the person to whom it was issued;

"Insurance" includes assurance, additional insurance, counter insurance, treaty and internal insurance, and re-insurance, guarantee and surety;

"Licence" means a licence granted pursuant to Part II of this Act;

"Licensee" means any body corporate holding a current valid licence pursuant to the provisions of this Act;

"Minister" means the Minister of Finance;

"Monetary Board" or "Board" means the Monetary Board established by the Cook Islands Monetary Board Act 1981;

"Off-Shore Insurance business" means any insurance business transacted exclusively by, for, or in respect of any person who -

(a) is not a resident of and is not domiciled in the Cook Islands; and

(b) does not engage in a trade or carry on a business within the Cook Islands,

but does include insurance business transacted by a company incorporated under the International Companies Act 1981-82 or registered as a foreign company under that Act.

"To reside" shall have the same meaning as is defined in the Constitution, and "residence" and "resident" shall have corresponding meanings;

"Secretary" means Secretary of the Board;

"Trustee Company" means a company registered under the Trustee Companies Act 1981-82.

PART II

LICENSING OF OFF-SHORE INSURANCE COMPANIES

3. Off-Shore Insurance - A person shall not transact any off-shore insurance business or hold himself out as transacting any off-shore insurance business, in the Cook Islands, unless that person holds a valid off-shore insurance licence issued under this Part.

4. Licensee to be Body Corporate - Subject to this Act, no person other than a company incorporated under the International Companies Act 1981-82 or a foreign company registered under that Act shall be granted a licence.

5. Application for Licence - (1) An application for a licence shall be made to the Monetary Board in the prescribed form, and shall be accompanied by -

(a) a certified copy of the Act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document or documents by which the body corporate is constituted; and

(b) such fee as may be prescribed by regulation; and

(c) such evidence as the Secretary may require -

(i) that the laws of the jurisdiction under which the body corporate is incorporated have been complied with;

(ii) of the nature and character of the body corporate's business;

(iii) of the financial standing of the body corporate;

(iv) of the stock ownership of the body corporate;

(v) of the shareholding and management of the body corporate; and

(d) an address for service within the Cook Islands; and

(e) such references as the Secretary may require; and

(f) such other information as may be required by regulation.

(2) In addition to the documents, information, and evidence which shall accompany an application under subsection (1) of this section, an applicant shall, if required to do so by the Secretary, furnish such additional documents, information, or evidence as the Secretary may require.

6. Decision of Board - (1) Where an application for a licence is made to the Secretary, he shall refer that application to the Board, which shall, after due consideration of that application, either grant a licence or reject the application, or defer the application and direct that such enquiries as it considers necessary be made.

(2) In making its decision under subsection (1) of this section, the Board shall have regard to whether the licence is to the advantage of the people of the Cook Islands and to the effect that the grant of that licence would have on the stability and balanced development of the Cook Islands' economy.

(3) Where the Board rejects an application, the Board need not give any reason for such rejection.

7. Licence may be subject to conditions - (1) Where the Board grants a licence, it shall do so subject to such terms and conditions, if any, as it thinks fit.

(2) If terms and conditions are imposed under subsection (1) of this section the Board may, from time to time, vary or revoke any of those terms or conditions or impose any additional conditions.

8. Refund of Fee - Where an application for a licence is rejected, any application fee, less a prescribed administration charge, may be refunded.

9. Notification of changes - (1) The holder of a licence shall, within 3 months after the making of an alteration in the Act, charter, deed of settlement, memorandum of association, articles of association or other document by which the licensee was constituted a body corporate, furnish to the Secretary particulars in writing of the alteration verified by a statutory declaration made by a senior officer of the body corporate authorised to do so.

(2) The holder of a licence shall forthwith notify the Secretary, in writing, of any material change in the particulars set out in the application for issue of licence or in the documents, information, or evidence accompanying that application or in any documents, information, or evidence, if any, given under section 5(2) of this Act.

10. Licence not transferable - (1) In this section "transfer" in relation to a body corporate, shall include the sale, transfer, or other disposition whatsoever of any of the shares of the capital of the body corporate, or of the shares of any company or companies controlling that body corporate, or any issue or allotment of any new shares in the capital of the body corporate, or the happening of any other matter or event whatsoever, the effect of which is to transfer directly or indirectly the effective ownership, management, and control of the body corporate.

(2) The holder of a licence shall not transfer the licence and any such purported transfer shall be ab initio void and of no effect.

11. Cancellation or suspension of Licence - (1) A licence may be cancelled or suspended by the Board, for such period as the Board deems fit, where the holder of the licence -

- (a) fails to furnish any document, information or evidence under subsection (1) or subsection (2) of section 5 of this Act;
- (b) fails to give a notification to the Secretary under section 9(2) of this Act;
- (c) does not, within 6 months after the issuance of the licence, commence to transact off-shore insurance business;
- (d) fails to comply with a term or condition of the licence;
- (e) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act; or
- (f) ceases to transact off-shore insurance business under the licence.

(2) Where the Board intends to suspend or cancel a licence under subsection (1) of this section it shall give the holder of the licence notice of its intention and a reasonable opportunity to show cause to the Board why the licence should not be cancelled.

(3) Where the Board has given notice to the holder of a licence of its intention to suspend or cancel the licence under subsection (2) of

this section the Board, after considering any submission by the holder of the licence, may resolve -

- (a) to proceed with its intention to suspend or cancel that licence;
- (b) to alter its intention by suspending instead of cancelling that licence or vice versa; or
- (c) not to proceed with its intention to suspend or cancel that licence,

and shall notify the holder of the licence of its intention.

(4) Where the Board notifies the holder of a licence of its decision to suspend or cancel that licence under subsection (3) of this section, the holder of the licence shall return that licence to the Secretary forthwith.

12. Appeal against cancellation or suspension - Any person who is aggrieved by the cancellation or suspension of a licence may, within 14 days of the giving of the notice under section 11(3) of this Act, appeal against the cancellation or suspension to a Judge of the High Court in chambers whose decision thereon shall be final.

13. Conditions of licences - (1) A licence shall, subject to this Act, be valid for a period of 1 year from the date of granting, and may be renewed upon application.

(2) The holder of a licence shall not transact, in the Cook Islands, any insurance business other than off-shore insurance business.

14. Place of Business - The holder of a licence shall transact business only through the office of a trustee company unless that licence holder applies for and receives the prior written permission of the Board to maintain a permanent establishment in the Cook Islands and the Board may grant that permission upon such terms and conditions as it thinks fit.

15. Licence fee - (1) There shall be payable upon the grant of every licence a licence fee which shall be prescribed by regulation.

(2) Every licence may be renewed annually upon payment of such annual fee as may be prescribed by regulation.

16. Asset backing - An applicant for, and a holder of, a licence -

- (a) shall have such surplus of tangible assets over liabilities as may from time to time be prescribed by regulation; and
- (b) if required at any time in writing by the Board so to do, shall demonstrate to the satisfaction of the Board its financial stability.

17. Annual Report and Audit - (1) The holder of a licence shall submit to the Board within 6 months of the end of its financial year audited accounts in the form prescribed by regulation.

(2) For the purposes of subsection (1) of this section, the audit shall be carried out by a competent auditor approved for that purpose by the Board.

PART IIIMISCELLANEOUS18. Keeping of accounting records - (1) In this section -

"Accounting records", in relation to a body corporate includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the body corporate are made up;

"Accounts" means profit and loss accounts and balance sheets, and includes notes (other than directors' reports) attached to, or intended to be read with, any of those profit and loss accounts or balance sheets.

(2) The holder of a licence shall -

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the body corporate;
- (b) keep its accounting records in such a manner as will enable true and fair accounts of the body corporate to be prepared from time to time; and
- (c) keep its accounting records in such a manner as will enable the accounts of the body corporate to be conveniently and properly audited.

19. Inspection - (1) In this section "Inspector" means a person appointed, in writing, by the Board, for the purposes of this section.

(2) An Inspector, upon production of proof of his appointment, shall, during the normal office hours of the licensee, have the right to inspect -

- (a) the licensee's accounting records;
- (b) the licensee's register of shares;
- (c) the licensee's record of transactions;
- (d) any other record kept by the licensee in the course of its off-shore insurance business; and
- (e) the premises where the licensee carries on its off-shore insurance business.

20. Supply of information - (1) The holder of a licence shall furnish to the Board such information in respect of its off-shore insurance business as the Board directs.

(2) A direction under this section shall not require information to be furnished with respect to the affairs of an individual customer.

21. Use of information by Board and others - No member of the Board, nor the Secretary nor an Inspector appointed under section 19 of this Act, shall reveal any information to any person other than to an officer of the Crown for the purposes of enabling him to carry out his duties as such officer of the Crown, and any such officer of the Crown to whom such information is revealed shall similarly not reveal it to any person other than such a person as is referred to herein.

22. Breaches of professional secrecy - (1) Every person commits an offence who -

- (a) divulges any information, in the Cook Islands or elsewhere, in relation to -
- (i) any off-shore insurance business in the Cook Islands;
 - (ii) the transfer of monies and property into or out of the Cook Islands in the course of any off-shore insurance business; or
 - (iii) any insurance policy issued by a licensee or the fact of any person having, or having had such a policy, of which he has become aware in his capacity as an officer, employee, or authorised agent of a licensee, or as an officer or employee of an auditing company; or
- (b) attempts to induce others to breach professional secrecy in relation to any such matters.

(2) An offence under subsection (1) of this section may be committed either during, or after the termination of, the official or employment relationship or of the agency or the practice of the profession.

(3) Notwithstanding subsection (1) of this section, it shall not be an offence under this section to divulge such information -

- (a) to an Inspector pursuant to section 19 or if directed to do so by the Board pursuant to section 20 of this Act;
- (b) to the person on whose behalf the off-shore insurance business is being carried out;
- (c) in the Cook Islands, to an officer or employee of the same licensee in the performance of his duties as an officer or employee;
- (d) to an officer or employee of an insurance company or other such financial institution outside the Cook Islands, if all the persons concerned in the insurance business or in whose name the policy stands, consent in writing to his doing so;
- (e) to an officer or employee of the licensee outside the Cook Islands, so long as the names of the persons concerned in the insurance business and any information which might identify them and the names in which policies stand are not divulged;
- (f) to an officer or employee of a trustee company at whose office the licensee is transacting business pursuant to section 14 of this Act.

(4) For the purposes of subsection (3)(d) of this section, all the persons concerned in off-shore insurance business and in whose names policies stand shall be deemed to have consented to an officer or employee of a licensee divulging to an officer or employee of an insurance institution outside the Cook Islands such information of the off-shore insurance business being carried out as is essential to the carrying out of that insurance business, but the consent deemed to be given pursuant to this subsection shall not apply to any particulars which are not so essential to the carrying out of that insurance business.

(5) Nothing in this section shall prevent the High Court from requiring any person to produce documents or to give evidence in any criminal proceedings or in any civil proceedings alleging fraud or other dishonesty of any facts relevant in such proceedings.

23. Breach of secrecy by officer or employee deemed to be breach by licensee - (1) For the purposes of section 22 of this Act, an offence by an officer or employee of a licensee or of an auditing company, as the case may be, or by a person after termination of his employment as an officer or employee of a licensee or of an auditing company, as the case may be, whether such offence occurs in the Cook Islands or elsewhere, shall be deemed also to be an offence by that licensee or by that auditing company.

(2) Notwithstanding subsection (1) of this section an offence under section 22 of this Act by a person after termination of the official or employment relationship, or of the practice of the profession with a licensee or an auditing company shall not be deemed also to be an offence by the licensee or by the auditing company, where the licensee or auditing company, as the case may be, can demonstrate, on the balance of probabilities, that it has taken all reasonable steps to prevent an offence by the person.

24. Penalty - Every person who commits an offence against this Act, where no other penalty is provided, shall be liable upon conviction to imprisonment for a term not exceeding 1 year, or to a fine of \$10,000, or both.

25. Relationship of this Act to other Acts - Where the provisions of this Act conflict with the provisions of any Act, other than the constitution of the Cook Islands, then the provisions of this Act shall prevail.

26. Regulations - The Queen's Representative may by Order in Executive Council make regulations prescribing all matters that by this Act are required or permitted to be prescribed by regulation or that are necessary for carrying out or giving full effect to the purposes or provisions of this Act and for the due administration thereof.

This Act is administered by the Cook Islands Monetary Board